IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 17942 of 2003(J)

PETITIONER:

A.V.SREEJA, WORKING AS HIGHER SECONDARY SCHOOL TEACHER (JUNIOR), NEW HIGHER SECONDARY SCHOOL, NELLIMOODU, AGED 28 YEARS, W/O. UNNIKRISHNAN, RADHIKA BHAVAN, PUTHICHAL, BALARAMAPURAM P.O., TRIVANDRUM 695 524.

BY ADV. SMT.SUSEELA R.BHATT
SRI.P.K.RAVISANKAR

RESPONDENTS:

1. **STATE OF KERALA REPRESENTED BY ITS PRINCIPAL SECRETARY, GENERAL EDUCATION DEPARTMENT, TRIVANDRUM.**
2. **DIRECTOR OF HIGHER SECONDARY EDUCATION, SANTHI NAGAR, TRIVANDRUM.**
3. **DISTRICT EDUCATIONAL OFFICER, NEYYATTINKARA.**
4. **THE MANAGER, NEW HIGHER SECONDARY SCHOOL, NELLIMOODU, TRIVANDRUM - 695 524.**
5. **O.N.JOY,H.S.A., NEW HIGHER SECONDARY SCHOOL, NELLIMOODU, TRIVANDRUM - 695 524.**

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.K.VINODKUMAR
SRI.P.K.MANOJKUMAR
SMT.RESMI RAMACHANDRAN
SRI.R.T.PRADEEP
SRI.R.S.KALKURA
BY GOVERNMENT PLEADER SMT.SUDHADEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.17942/2003

ORDER ON IA. NO.3642/2003 IN OP. NO.17942/2003

DISMISSED

29.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF APPOINTMENT DT. 17.7.2000 ISSUED BY THE 4TH RESPONDENT.

EXT.P2:- COPY OF THE ORDER NO.B5/14792/01/D.DIS DT. 22.1.03 ISSUED BY DEPUTY DIRECTOR OF EDUCATION, TRIVANDRUM.

EXT.P3:- COPY OF THE PROVISIONAL CERTIFICATE DT. 7.10 .02 ISSUED BY MADURAI KAMARAJ UNIVERSITY TO THE PETITIONER.

EXT.P4:- COPY OF THE MARK LIST OF B.ED DEGREE OF THE PETITIONER.

EXT.P5:- COPY OF THE M.ED. CERTIFICATE OF THE PETITIONER.

EXT.P6:- COPY OF THE REPRESENTATION DT. 10.12.02 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE APPOINTMENT ORDER DT. 13.12.02 ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE PETITIONER.

EXT.P8:- COPY OF THE JUDGMENT DT. 13.1.03 IN OP. 957/03.

EXT.P9:- COPY OF THE COVERING LETTER DT. 24.5.03 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE ORDER NO.ACD.B5/2099/03 HSE DT. 21.5.03 ISSUED BY THE 2ND RESPONDENT.

EXT.P11:- COPY OF THE ARGUMENT NOTE DT. 4.4.03 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE AWARD OF MARKS TO THE PETITIONER IN THE INTERVIEW HELD ON 12.12.02.

EXT.R5(a):- COPY OF THE ORDER DT. 13.12.02 ISSUED BY THE MANAGER NEW HIGHER SECONDARY SCHOOL, NELLIMOOD- 695 524 TO THE PRINCIPAL NEW H.S.S. NELLIMOOD.

EXT.R5(b):- COPY OF THE LETTER DT. 20.3.03 ISSUED BY THE PRINCIPAL IN CHARGE, NEW H.S.S. NELLIMOOD TO THE O.N. JOY H.S.A.(HISTORY).

/TRUE COPY/
P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.17942 OF 2003

Dated this the 29th day of October, 2007

JUDGMENT

Petitioner was appointed as UPSA in the school of the 4th respondent on 17.7.2000. On 10.12.2002, a vacancy of HSST (Junior) in History arose in that school. The petitioner was appointed as per Ext.P7 order of the manager, on 13.12.2002. The 5th respondent, who was an HSA in that school, challenged that appointment. As per the impugned Ext.P10, the Director concluded that neither the petitioner nor the 5th respondent was qualified on 10.12.2002, the date of occurrence of the vacancy, and that the appointment of the petitioner on 13.12.2002 was made in haste. Accordingly, the Director set aside the selection of the petitioner and directed the manager to conduct a fresh selection. In doing so, the Director concluded, as already noticed, that the 5th respondent was also unqualified on the date of occurrence of the vacancy.

2. Though it can be noticed that the 5th respondent, not having filed any writ petition challenging Ext.P10, the finding of the Director that he was unqualified on the date of occurrence of the vacancy stares at this point of time, I am inclined to consider his claim also to finally resolve the disputes between the parties.

3. As already noticed, the vacancy arose on 10.12.2002. On that day, the 5th respondent did not possess SET or any equivalent qualification. He appeared for the SET only on 15.12.2002, i.e., after the appointment of the petitioner as HSST on 13.12.2002, as per ExtP7. The results of SET of the 5th respondent was published on 21.12.2002. This facts would show that the Director was right in concluding in Ext.P10 that the 5th respondent was unqualified to be appointed as HSST on the date of occurrence of the vacancy, i.e., 10.12.2002.

4. Regarding the petitioner, she had B.Ed in Physical Science and M.Ed. There was no teacher in the school with B.Ed in History. Therefore, in terms of Rule 6 in Chapter XXXII K.E.R.,

in the absence of persons with B.Ed degree in History, B.Ed degree in Physical Science would suffice. This is the effect of the entry at Sl.No.(ii) (2) against Sl.No.2 (22) under column 4 in the table occurring in Rule 6 of Chapter XXXII. Thus, she had the education qualification as on the date of occurrence of the vacancy, i.e., 10.12.2002. The petitioner was appointed as UPSA on 17.7.2000. In terms of Rule 7 in Chapter XIV A K.E.R., the appointment takes effect on the issuance of the appointment order and shall be effective from the date on which the teacher is admitted to duty. The requirement of due approval of that appointment does not, in any manner, affect the date on which the appointment becomes effective, which shall be the date on which the teacher was admitted to duty, even when formal orders of approval by the departmental officials gets delayed. This issue is no more res integra. See **Ponnamma** v. **Manager, K.A.M.U.P.School, Muthukulam and Others** [ILR 1972 Kerala 176]. Therefore, even if Ext.P2 was issued only on 22.1.2003, directing the District Educational Officer to approve the appointment of the petitioner, her appointment is effective

from 17.7.2000, the date of Ext.P1 or from the date on which she was admitted to duty, provided that date was after the date of appointment as per Ext.P1. Hence, the stand of the Director that as on the date of occurrence of vacancy, i.e., 10.12.2002, the petitioner was not a teacher available as an UPSA for consideration for appointment by transfer as an HSST, does not stand in the eye of law.

5. I may also notice that the making of a staff list, called the seniority list of teachers, in terms of Rule 36 of Chapter XIV A K.E.R. does not depend upon any approval order being issued, though a person, who may find place in a seniority list by virtue of the appointment may cease to be a member of the staff of the school, if that appointment is not ultimately approved in accordance with law. For the aforesaid reasons, the petitioner was an UPSA available among the staff of the school and was entitled to be considered provided there were no HSAs available for appointment by transfer as HSA (Junior) in History in the school.

6. Having found that the 5th respondent is not qualified, there was no other HSA claiming the appointment. Obviously therefore, the manger cannot be found fault with in having made an appointment from among UPSAs.

7. This leaves one question. The Director has found that the selection was in haste. This issue is seriously canvassed by the contesting 5th respondent. Though, having found that the 5th respondent was not qualified on the date of occurrence of vacancy and is therefore, not entitled to contest the claim of the petitioner, I shall consider this issue also as argued on behalf of the 5th respondent. According to him, the occurrence of vacancy on 10.12.2002 was on account of the resignation of one Vijayan, who left the institution to join Government service. It is contended that the vacancy ought to have been notified before selection. On a vacancy that occurred on 10.12.2002, the appointment on 13.12.2002 is in undue haste, it is contended. The provisions in Chapter XXXII show that the first preferred

mode of appointment is by transfer from HSAs in the school and in their absence, by transfer from UPSAs. A close reading of Rule 4 (3) in Chapter XXXII would show that HSST (Junior) is selected from HSAs or in their absence from UPSAs etc. from the school, on the basis of their qualifications. The 4th respondent has only one school. The field of choice that he has to consider for an appointment by transfer to category of HSST does not take much time to be noticed. It is the assertion of the manger that selection was conducted. The 5th respondent points out that the petitioner had been on maternity leave and was obviously not subjected to an interview on 10.12.2002 or on any date before Ext.P7 appointment order was issued on 13.12.2002, which, going by the endorsement on Ext.R5(a), reached the hands of the Principal only on 4.1.2003. It is also stated by the 5th respondent that the petitioner joined only after expiry of her maternity leave. The controversy regarding publication of a notice about the availability of the vacancy has ceased with an affidavit placed on record by the then Principal of the institution, following an order issued by me on 7.9.2007 in the wake of Ext.R5(b) letter issued

by the Principal. It is the assertion of the Principal in her affidavit that all that she meant in Ext.R5(b) was that she had not issued any notification as the Principal-in-charge. In the same breath, she has stated that the manager had published a notification regarding the vacancy, in the manager's notice board. Having regard to these facts, the views of the Director that there was haste in making the appointment was unnecessary. That apart, haste, by itself, does not vitiate, particularly when the selected candidate is shown to have been fully qualified on the date of occurrence of vacancy and the challenge to the selection is only by one person, the 5th respondent, who has been found to be unqualified.

For the aforesaid reasons, Ext.P10 is quashed and it is declared that the appointment of the petitioner as HSST (Junior) (History) as per Ext.P7 order dated 13.12.2002 is liable to be approved and she is entitled to all consequential benefits on account of such appointment. The official respondents will ensure that appropriate approval orders are issued on the basis

of this declaration within an outer limit of one month from the date of receipt of a copy of this judgment and monetary benefits are made available within a further period of three months. The writ petition is allowed as above. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.